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BEFORE THE

Federal Communications Commission

AUG - 8 1989

WASHINGTON, D. C. 20554

Federal Communications Commission
Office of the Secretary

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In the Matter of

REQUEST OF A. C. NIELSEN COMPANY
FOR PERMISSIVE AUTHORITY TO USE
LINE 22 OF THE ACTIVE PORTION OF
THE TELEVISION BROADCAST VIDEO
SIGNAL FOR TRANSMITTING ENCODED
ADVERTISING AND/OR PROGRAM
IDENTIFICATION INFORMATION.

File No. _____

To: The Commission

OPPOSITION TO REQUEST

Airtrax, a California
general partnership

John G. Johnson, Jr.
Bryan, Cave, McPheeters & McRoberts
1015 Fifteenth Street, Northwest
Suite 1000
Washington, D. C. 20005-2689
Telephone: (202) 289-6100

August 8, 1989

SUMMARY

Airtrax, a California general partnership, opposes the Request filed by A. C. Nielsen Company for permissive authority to use Line 22 of the active video signal to broadcast encoded transmission identification and verification signals pursuant to Nielsen's Automated Measurement of Lineups ("AMOL") system.

Nielsen's Request fails to demonstrate compliance with a threshold requirement of the Commission for the use of so-called "special signals" on Line 22, namely, Nielsen has not made a showing that it is infeasible to transmit the information that Nielsen proposes to transmit on Line 22 by other means which have no detrimental effect upon broadcast service.

The traditional AMOL service encodes information that is not an integral part of the program material with which the codes are transmitted. Accordingly, the Commission's requirement that Line 22 be occupied only by coded signals that are an integral part of the associated program material would not be satisfied.

Nielsen has conspicuously failed to commit itself without qualification to adhere to the Commission's requirement that television station licensees must retain ultimate control over their stations' transmissions and must not be required to

transmit Nielsen's codes over Line 22 of their stations' signals, if they are disinclined to do so.

The published code structure of Nielsen's AMOL system appears not to be suited to one (1) of the purposes for which Nielsen is seeking Line 22 authorization, namely, commercial advertisement verification. In any event, Nielsen has not disclosed its code structure on the record of this proceeding, and may have misrepresented the alleged similarity of its AMOL system to another system previously approved by the Commission's staff.

Airtrax believes that the Commission's resolution of the issues raised in Nielsen's Request and in this Opposition are of sufficiently great interest to, and will have a sufficiently significant impact upon, a broad enough spectrum of potentially-affected parties within the television industry, such that comments in writing ought to be invited from the public at large, and any Commission action in this proceeding ought to be based only upon a formal written record reflecting the views of all such parties who choose to participate.

Because of the potential impact of the resolution of this proceeding upon the television industry, and in view of the adversity of positions adopted, the procedural safeguards incident to the strict application of the Commission's *ex parte* rules should be adopted in the context of a so-called "restricted proceeding."

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To: The Commission

OPPOSITION TO REQUEST

COMES NOW Airtrax, a general partnership organized under the laws of the State of California ("Airtrax"), and by its undersigned attorney respectfully submits this Opposition to the request of A. C. Nielsen Company ("Nielsen"), filed by letter to the Commission's staff from Nielsen's communications counsel dated July 19, 1989 (the "Request"), for permissive authority to use Line 22 of the active video signal to broadcast encoded transmission identification and verification signals pursuant to Nielsen's Automated Measurement of Lineups

("AMOL") system.^{1/} In support thereof, Airtrax offers the following:

**I. INTRODUCTION AND OVERVIEW OF NIELSEN'S
AMOL SYSTEM.**

1. Prior to February, 1988, Nielsen's AMOL service was designed primarily to provide verification of national television network program "clearances" by individual network-affiliated television stations, *i.e.*, confirmation that a particular affiliate station broadcast its network's regular daily network "feeds" on a particular date and at particular times. As such, AMOL has been in operation since 1982, and has been provided on Line 20 of the Vertical Blanking Interval ("VBI"), in accordance with Section 73.682(a)(21) of the

^{1/} Nielsen's Request states that Nielsen

. . . proposes to use with television licensees line 22 of the active video signal to broadcast encoded transmission identification and verification signals pursuant to Nielsen's "AMOL" system. . . .

Request, at page 2.

Commission's Rules and Regulations, 47 C.F.R. Section
73.682(a)(21) (1988).^{2/}

2. This traditional AMOL service has been provided in the following manner. Nielsen has encoded Line 20 of the VBI on network-provided programming with information that is "readable" by special AMOL decoders installed in markets where the network's feed is expected to be broadcast by a station affiliated with that network. The encoded information identifies the network feed by its source (*i.e.*, the network's satellite origination point), and by the date, hour, minute, and second of the feed. This information is injected into the VBI associated with the network feed programming, without regard to the particular program material that is being fed by the network. The AMOL decoder in each affiliate's market "watches" the affiliate's signal and reads the times at which the coded information in the VBI appears and disappears. These data then allow Nielsen to verify at what times during each

^{2/} The VBI is that portion of the television video signal that appears as a black bar when the picture rolls. Technically, it is lines 1-21 of field 1 and lines 1-20 and the first half of line 21 of field 2 of the video signal. *In re Amendment of Parts 2, 73, and 76 of the Commission's Rules to Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations, Report and Order in MM Docket No. 84-168*, 101 F.C.C.2d 973, n.1, *aff'd on reconsideration*, 58 Rad.Reg.2d (P&F) 819 (1985).

day each such affiliate station was transmitting network feeds to its audience, and thereby enables the network to ascertain the extent to which each affiliate cleared the network's feed.

3. Beginning in February, 1988, Nielsen expanded the scope of its traditional AMOL system, in order to provide electronic program verification for syndicated television programming. Nielsen's AMOL service for verification of syndicated programs operates as follows. At the time that a syndicated program is assembled and integrated into a single, continuous tape, AMOL encoding is injected on to Line 20 of the VBI for the entire length of the program. This encoded information includes a Source Identification ("SID") Code and a Date/Time "Stamp," which enable the AMOL decoders installed in individual television markets to identify the program by its series title and by the individual episode of each program series. When such a program is broadcast on a local-origination basis by a network-affiliated station to which an AMOL decoder is tuned, Nielsen can verify that that station transmitted the program in question by specific episode number, date, and time. The same situation obtains in the case of a non-network-affiliated (*i.e.*, "independent") station, unless (i) the AMOL decoder is "scanning" across several local independent station channels, and happens not to be watching a given independent station at the time that the AMOL-encoded

identifiers are being transmitted by that station,^{3/} or (ii) the independent station has failed to "pass" the AMOL information encoded on Line 20 of the VBI.

**II. NIELSEN'S PROPOSED USE OF LINE 22 OF
THE ACTIVE TELEVISION VIDEO SIGNAL DOES
NOT COMPORT WITH COMMISSION POLICY.**

**A. Nielsen Has Not Shown That It Is
"Infeasible" to Transmit the AMOL
Signals By Means Other Than Line 22.**

4. The Commission's staff has, in the past, granted permissive authority to various organizations--including Republic Properties, Inc. ("Republic"), an affiliate of Airtrax--to use Line 22 in the active portion of the television broadcast video signal for encoding information designed to identify and to describe certain features of commercial advertisements that are intended to be broadcast by television stations. In so doing, however, the Commission's staff has predicated those authorizations upon a preliminary finding that such information would qualify as so-called "special signals," and that

^{3/} Unlike network-affiliated stations, for each of which Nielsen has installed a dedicated decoder, Nielsen typically installs only a single decoder to scan across all of the independent stations in a market.

. . . it is infeasible to transmit the signals by means which have no detrimental effect on the broadcast service.

See, e.g., letter to Burton Greenberg of TeleScan, Inc. of New York, New York, from the Commission's staff, dated July 18, 1985 (the "TeleScan Authorization"), at page 2.^{4/}

5. In the case of the TeleScan Authorization, for example, the Commission's staff was presented with a situation in which television stations were resisting the transmission of TeleScan-encoded commercial advertisement identification and description information on Line 20 within the VBI. *See* TeleScan Authorization, at page 1.^{5/} As a result of such resistance, TeleScan was compelled to request authority to make use of a line within the active portion of the television broadcast video signal. Based upon the Commission's threshold finding that it was not feasible to transmit the TeleScan-encoded "special signal" on Line 20 within the VBI, where there would be no detriment to the quality of the

^{4/} A copy of the TeleScan Authorization is appended to Nielsen's Request, as Exhibit A thereto.

^{5/} Airtrax submits, upon information and belief, that a major reason why many of the network-affiliated television stations were disinclined to yield Line 20 of the VBI to TeleScan's service was the fact that those stations were already transmitting Nielsen's AMOL codes on Line 20 on behalf of their affiliated networks. *See* Paragraph 2, *supra*.

television picture, the Commission's staff authorized the permissive use of Line 22 by TeleScan. *Id.*, at pages 2-3.

6. In contrast to the situation obtaining in the TeleScan case, however, Nielsen has not shown that it is infeasible to transmit AMOL-encoded information within the VBI. On the contrary, Nielsen's AMOL service has proven to be commercially successful using Line 20 of the VBI for transmitting AMOL information. As discussed in Paragraph 2, *supra*, Nielsen has experienced little or no difficulty in transmitting AMOL signals by means of network-affiliated stations. With respect to independent stations, many of them--like the network affiliates--are regularly transmitting AMOL signals. To the extent that Nielsen may have experienced difficulty in the transmission of AMOL codes by independent stations, that difficulty could potentially be removed by (i) Nielsen's installation of a sufficient number of AMOL decoders in each market, in order to insure that each independent station has its own, dedicated decoder, rather than relying upon a single decoder to scan all such stations, with the risk that the decoder may not be watching a particular independent station at the moment when the AMOL code is being transmitted by that station (*see* footnote 3, *supra*), or (ii) Nielsen's working with those independent stations that are inadvertently

"stripping" Line 20 of the VBI, due to misaligned equipment.^{6/}

7. Nielsen has failed to show that it would be "infeasible" to undertake relatively simple measures in order to obtain universal or near-universal passing of its AMOL codes on Line 20 of the VBI by television stations. Under those circumstances, Airtrax submits that Nielsen has failed to satisfy the Commission's threshold requirement that permissive authority to use "special signals" in Line 22 within the active portion of the television broadcast video signal will be

^{6/} In its publication entitled *Automated Measurement of Lineups for syndicators -- User's Manual* (1988), Nielsen states, at page 14:

If AMOL code is not picked up for some stations, here are a few possible reasons:

- o Is it the distribution site? Were there *any* stations verified that received the encoded program from that specific distribution site? If not, then it *could* be the encoding equipment at a specific distribution site.
- o If the encoding equipment is not at fault, the station could be inadvertently stripping the code at time of record (if not a live feed). This can occur if the taping device is misaligned. Contact the station to pinpoint the equipment used for taping and instruct the station technician to contact . . . [Nielsen AMOL personnel].

granted only where it has been shown to be infeasible to transmit the subject information by other means that would have no detrimental impact upon the broadcast service.^{1/}

Accordingly, the Request should be denied inasmuch as it is inconsistent with Commission policy and precedent in this area.

B. The Commission's Past Authorizations to Use Line 22 Involved Coded Signals That Are an "Integral Part" of the Associated Program Material; Nielsen's Traditional AMOL Signals Are Not.

8. In the TeleScan Authorization, as well as in similar authorizations granted by the Commission's staff to Republic, Ad Audit, Inc., and VidCode, Inc., the Commission has allowed so-called "special signals" to be encoded on Line 22 of the active video signal, where the codes identify and describe certain characteristics of commercial advertisements to be broadcast by television stations. In so doing, the Commission made a preliminary finding that

^{1/} Cf. *In re Use of Special Signals for Network Purposes Which Adversely Affect Broadcast Service*, 22 F.C.C.2d 779, 780 (1970):

. . . we expect that any request for an authorization to use such special signals will include a showing that it is infeasible to transmit signals within the network by means which have no detrimental effect on the broadcast service.

. . . the nature and purpose of the information to be encoded requires that it be transmitted as an integral part of its associated program material. Thus, we believe that it would not be practical to transmit TeleScan commercial verification data separately from the television signal carrying the program being monitored.

TeleScan Authorization, at page 2.

9. In a similar vein, the Airtrax codes (derived from the Republic system) identify commercial advertisements by date and time of broadcast and by duration, and also describe certain characteristics of those advertisements, such as verification of synchronization information, the presence or absence of audio (including stereo), the presence or absence of color video, the presence or absence of foreign-language content ("Secondary Audio Program," or "SAP"), *etc.*

10. To the extent that the traditional AMOL service (*see* Paragraph 2, *supra*) involves codes that are provided on Line 20 of the VBI and that are limited to information concerning the network's feed to its affiliates by network source and by feed date and time--without reference to actual network program identification or content--AMOL's "nature and purpose" do not require "that it be transmitted as an integral

part of its associated program material," TeleScan Authorization, at page 2. Therefore, the AMOL codes need not and should not be transmitted within the active video. Rather, the AMOL signals are more appropriately transmitted on Line 20 of the VBI, as has been the case since 1982.

11. Line 22 of the active video signal does not have the capacity to accommodate both the commercial advertisement verification codes inserted by companies such as Airtrax, TeleScan, *et al.*, and the AMOL codes inserted into network feeds. Because the commercial advertisement verification codes are inserted at an earlier point in the distribution/transmission sequence than the AMOL codes, the latter would obliterate the former. Thus, were the Commission to authorize traditional AMOL encoding on Line 22, program-related codes on Line 22 such as those inserted by Airtrax would be obliterated by AMOL network-feed codes that are not specifically program-related. Such a result would clearly do violence to the principle established in the TeleScan Authorization, (Paragraph 8, *supra*).

**C. Nielsen Has Failed to Demonstrate
Conclusively that It Will Comply with
the Commission's Conditions for
Permissive Authority to Use Line 22.**

12. Nielsen's Request acknowledges that in past Commission staff actions granting permissive authority to use

Line 22 of the active portion of the television broadcast video signal, the Commission has imposed two (2) conditions upon such use, as follows:

. . . *first, television licensees were required to retain ultimate control over their transmissions and would not be required to transmit the TeleScan signals; and second, the TeleScan signals must not produce degradation of the television service received by viewers.*

Request, at page 2 (underscoring in original; emphasis supplied).

13. Nielsen's Request purports to offer assurance to the Commission that both of the above-quoted conditions in the TeleScan Authorization will be fulfilled in the case of Nielsen's proposed use of Line 22. With respect to the first of those conditions, however, Nielsen's Request later states that

. . . television licensees will retain ultimate control over their transmissions and are not required to transmit the AMOL signals *outside of their contractual agreements with Nielsen and programmers.*

Id. (emphasis supplied).

14. The artful wording of counsel in Nielsen's Request, quoted immediately above, clearly leaves open the possibility that television station licensees may be required--conceivably against their preferences--to include AMOL signals on Line 22 of their stations' transmissions within the terms of their respective contractual agreements with Nielsen and programmers.

15. In the television syndicated programming business, advertisers (and their agencies) purchase commercial messages not only in particular program series, but also in particular episodes of particular program series. Thus, for example, commercial advertisements purchased in one (1) episode of a given series may differ from the advertisements purchased in a separate episode of the same series.

16. The advertiser (or its agency) will typically pay for the commercial message(s) that it contracted to purchase only upon (i) verification that the particular episode of a program series in which that advertiser's message(s) were integrated was, in fact, broadcast by a given station or stations, and (ii) confirmation to the advertiser (or to its agency) that the particular episode of the program series in question was watched by a set number of television viewers (*i.e.*, audience ratings). The television program syndicator

therefore does not receive compensation from the advertiser or agency until the advertiser or agency has received verification that the particular program series episode in which its advertisement(s) were integrated was in fact broadcast by the contracted-for number of stations and was watched by an audience of a measured size. As a consequence, the syndicator has a strong financial interest in expediting the delivery of those verifications to the advertiser or its agency.

17. Nielsen is the leading national television audience measurement and viewer ratings service, and in fact, Nielsen has the only national television viewer ratings service that is accepted by most, if not all, national television advertisers and their agencies for purposes of payment for broadcast services. Nielsen's television viewership ratings projections are derived from data obtained from individual television viewers who participate in Nielsen's audience surveys. Typically, the participating viewer in a Nielsen survey records the particular television station and program (by program series title) that he or she is watching at any given time of any particular day during the duration of the survey period. Generally, however, the survey participant does not provide information about a specific program episode that he or she is watching. Therefore, the survey data, by themselves, do not enable Nielsen or its advertiser clients to

verify that any particular program episode (including any commercial advertisements integrated into such episode that were purchased by such clients) was viewed on any particular date or at any particular time.

18. A service such as Nielsen's AMOL service for syndicated programming (*see* Paragraph 3, *supra*) is intended to provide the requisite program episode broadcast verification data, which--in combination with Nielsen's own audience survey data--can give the syndicator the information needed to obtain payment from the advertiser. Nielsen is actively marketing AMOL to program syndicators as a means of expediting the process for obtaining such payment:

Before AMOL, program station lineup information was collected in various ways, by mail, phone and/or computer transmission from networks, syndicators and stations, and it was processed without the benefit of electronic confirmation. Checks were made to assure that no more than one program was claiming a single station time period. If such a conflict occurred (2 programs claiming one station time slot), the situation was resolved by rechecking the lineups with the source of conflicting material--the networks, syndicators and stations. This was a long, time-consuming process.^{8/}

^{8/} Nielsen Newscast (No. 2, 1987), at page 8.

19. Moreover, Nielsen has heretofore declined to accept, for purposes of its ratings reports to its clients, any form of program broadcast verification (including verification of commercial advertisements integrated in programs) provided by any independent verification service. The syndicator community, therefore, is strongly induced to rely upon the AMOL syndicated-programming verification service (as an adjunct to, and "bundled" with, Nielsen's ratings service), in order to expedite payment from the advertiser community.

20. The syndicators, consequently, can be expected to exert influence or pressure upon television stations to yield Line 22 of their signals to AMOL, even when those stations would prefer not to do so. That is what may be intended by the qualified statement in Nielsen's Request, to the effect that television station licensees will not be required to transmit the AMOL signals "outside of their contractual agreements with Nielsen and programmers." Paragraph 13, supra.

21. The Commission's policy in this area has been to safeguard against all circumscription the right of the television station licensee, charged as a public trustee and accountable as such, to determine what shall and shall not be transmitted to the public by his/her/its station. To that end, the Commission has flatly prohibited contractual arrangements

that might deprive the licensee of complete freedom to decide what his/her/its station will broadcast, e.g., Section 73.658(e) of the Commission's Rules and Regulations, 47 C.F.R. Section 73.658(e) (1988), and has also warned that it will take "appropriate corrective action" to redress any pressure applied to stations by others in order to induce such stations to carry encoded information as part of their television transmissions.^{2/}

22. Inasmuch as Nielsen is vested with both a financial incentive and the market power to overcome any contrary preferences on the part of television station licensees with respect to the use of Line 22 of their stations'

^{2/} *In re Amendment of Section 73.682 of the Commission's Rules to Permit the Transmission of Program Related Signals in the Vertical Blanking Interval of the Standard Television Signal, Report and Order in BC Docket No. 78-308, 49 Rad.Reg.2d (P&F) 1559, 1560 (1981):*

As for the licensees' fears of network pressure to carry the [encoded] SID signal, we observe that licensees are required to retain ultimate control over the content of their transmission, including radiated VBI signals. Hence, any attempt to interfere with a licensee's discretion to control the overall nature of its service offering, if it occurred, might constitute a matter warranting appropriate corrective action by the Commission.

transmissions, and given that Nielsen under those circumstances has declined to provide the Commission with an unqualified commitment to abide by the requirement that television stations must retain ultimate control over their transmissions and must not be required to transmit the AMOL signals, within the terms of or "outside of their contractual agreements with Nielsen and programmers," the Commission may not approve the Request consistently with the treatment afforded to similarly-situated requestors such as TeleScan and Republic.

**III. NIELSEN'S AMOL FORMAT DOES NOT HARMONIZE
WITH NIELSEN'S PROPOSED USE OF LINE 22.**

23. Nielsen's Request states that Nielsen seeks authorization to use Line 22 ". . . for the purpose of transmitting encoded *advertising* and/or program identification signals." Request, at page 1 (emphasis supplied). Later in its Request, Nielsen states that it proposes to use Line 22 ". . . to broadcast encoded transmission identification and verification signals pursuant to Nielsen's 'AMOL' system." *Id.*, at page 2.

24. Nielsen's representations in its Request appear to be internally inconsistent. To date, AMOL has been designed to provide source origination and date/time information for television network feeds to affiliated stations (*see*

Paragraph 2, *supra*), and to provide source and program/episode identification for syndicated programs (see Paragraph 3, *supra*). The published AMOL data format,^{10/} a copy of which is submitted as Appendix A hereto, encodes only two (2) frames per each second's available thirty (30) frames, resulting in a relatively low level of data resolution. On the one hand, that level lends itself reasonably well to network-feed and program identification encoding, due to the relatively lengthy run-times of those kinds of program material and the reduced need for frame-by-frame verification.

25. On the other hand, commercial advertisers typically demand a substantially higher level of data resolution, up to and including encoding all thirty (30) frames per second of transmission. Thus, for example, the TeleScan format and the Airtrax format, both of which are designed specifically to provide commercial advertisement verification and description data, encode at a rate of thirty (30) frames per second in order to provide the higher level of resolution required by the commercial advertiser community.

26. It therefore appears, notwithstanding Nielsen's representations in its Request, that the proposed AMOL encoding

^{10/} *Automated Measurement of Lineups for syndicators -- User's Manual* (1988), at page 7.

on Line 22 for advertising verification is inconsistent with AMOL's code structure and its level of data resolution. It also appears to be the case that AMOL's code structure is sufficiently different from TeleScan's code structure that Nielsen's proposal, without more, cannot be said to fall within the ambit of the TeleScan Authorization, as is intimated in Nielsen's Request.^{11/} At a minimum, Nielsen should be required to disclose its proposed code structure on the record, as both Republic and TeleScan were required to do.

Conclusion

27. In conclusion, Airtrax respectfully urges the Commission to do each of the following:

- a. In order to develop a complete factual record concerning this matter prior to taking any action, the Commission should give formal, written public notice of Nielsen's Request and of Airtrax's Opposition thereto, and should invite

^{11/} Nielsen's Request suggests that like VidCode, Inc., whose proposed use of Line 22 was comparable to the TeleScan Authorization, "Nielsen herein *similarly* proposes to use . . . line 22. . . ." Request, at page 2 (emphasis supplied).

the filing of formal, written comments thereupon from interested parties (which may include Nielsen and Airtrax);

- b. In view of the patent and substantial adversity of positions between the parties to this proceeding, and in view of the magnitude of the effect of any resolution of this matter upon the universe of potentially-affected parties, the Commission should designate this proceeding as a "restricted proceeding" under Section 1.1208(c)(5) of the Commission's Rules and Regulations, 47 C.F.R. Section 1.1208(c)(5) (1988), and apply the Commission's so-called "*ex parte*" rules accordingly; and
- c. Based upon the foregoing, the Commission should deny Nielsen's Request.